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DIGITAL REALTY TRUST, INC. and ELLEN JACOBS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL SOMERS, an individual,

Plaintiff,

v.

DIGITAL REALTY TRUST, INC., a Maryland
corporation; ELLEN JACOBS, an individual, and
DOES ONE through TEN, inclusive,

Defendants.

Case No. 3:14-cv-05180 EMC (KAW)

**DEFENDANTS' MOTION TO STRIKE
DOCKET NOS. 205 AND 206 (PLAINTIFFS'
"JOINT" DISCOVERY LETTERS)**

COME NOW Defendants and move the Court to strike Plaintiff's untimely and procedurally improper discovery letters filed this morning as Dkt. Nos. 205 and 206.

Plaintiff seeks to get "*four* bites at the apple" with these filings. Here is the first bite: The letters filed today as Dkt. Nos. 205 and 206 were prepared in February and early March, 2017. Docket No. 206 was completed in February 2017 and Docket No. 205 in early March 2017. Despite this and without any explanation, Plaintiff never filed either letter. He sat on them until today. Events subsequent to the

1 creation of the letters make filing them now improper. Indeed, had Plaintiff filed the letters when they
2 were ripe, then he would not have needed the next two bites at the apple.

3 Here is the second bite: After the letters had been prepared, the Court issued its March 8, 2017
4 Order (Dkt. No. 187) requiring the parties to each prepare a discovery letter outlining “**all** outstanding
5 discovery disputes that the parties desire the Court to resolve.” (Emphasis in original.) The issues set
6 forth in Dkt. Nos. 205 and 206 should have been addressed by Plaintiff in his letter to the Court. Yet, he
7 never filed that letter. Consequently, the Court ruled that he waived the issues. (Dkt. No. 191, pp. 1:27-
8 2:1.) Despite that ruling and waiver, he filed Dkt. Nos. 205 and 206.

9 Here is the third bite: Even after ruling that Plaintiff waived his discovery issues (Dkt. No. 191),
10 the Court still invited him to meet and confer over his discovery concerns in Judge Westmore’s
11 courtroom. (Dkt. No. 191.) At that long meet and confer session, the parties discussed all manner of
12 Plaintiff’s discovery concerns. Items discussed in Dkt. Nos. 205 and 206 were discussed during that
13 meet and confer session, such as Defendant Digital’s document retention policy and Digital’s voicemail
14 systems. Despite that effort, Plaintiff filed Dkt. Nos. 205 and 206.

15 In addition, the submission of Dkt. Nos. 205 and 206 violates the Court’s Order of March 23,
16 2017, which requires the parties to “contact the courtroom deputy to schedule a phone call with the
17 undersigned to discuss any proposed joint letter.” (Dkt. No. 197.) The filings were contrary to the
18 Court’s Order and should be stricken for that additional reason.

19 Finally, Plaintiff’s complaints are moot. Much of what is discussed in Dkt. Nos. 205 and 206
20 was provided to Plaintiff in prior discovery responses and also in the depositions he took this week. For
21 example, he requests a declaration from an individual that he deposed this week. Likewise, he spent
22 over an hour and a half on the record with Digital’s Chief Information Officer who testified extensively
23 about the company’s voicemail retention system, which is the subject of Dkt. No. 205. He then had two
24 additional sessions with the witness who decided that he should be terminated, both as an individual and
25 as a 30(b)(6) deponent, and questioned her at length about the facts and documents supporting that
26 decision. All of that is in Dkt. No. 206.

1 Because of the three bites plaintiff has been given, his waivers of the issues in Dkt. Nos. 205 and
2 206, and the extensive live testimony he has secured, his current effort to have a fourth bite should be
3 stricken. The Court is asked to strike Docket Nos. 205 and 206.

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5 DATED: April 7, 2017

Respectfully submitted,

6 SEYFARTH SHAW LLP

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8
9 By: /s/ Brian T. Ashe

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